

FILED
FEB 22 2018

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**CLERK, U.S. BANKRUPTCY COURT
WEST DIST. OF PENNSYLVANIA**

In re: : Case No.: 17-20492-GLT
: Chapter: 11
Joseph Cuervo :
Mary E. Cuervo :
Debtor(s). : Date: 2/22/2018
: Time: 10:00

PROCEEDING MEMO

MATTER: #129 - Confirmation of Amended Plan of Reorganization Filed 12-12-17
#145 - Objection by USA, IRS
#146 - Objection by Com. of PA, DOR
#147 - Brief in Support of Objection by Com. of PA, DOR
#148 - Summary of Ballots
#152 - Order Approving Stipulation between Debtors and Com. of PA, DOR

APPEARANCES:

Debtor: Gary William Short
IRS: Jill Locnikar
DOR: Larry Palmer

NOTES:

Short: Class 4 no longer exists. One impaired class, class 5, has voted to accept the plan. Agrees with amending the plan to resolve part of the IRS's objection so that payment will be made within 60 months of the petition date in compliance with the Bankruptcy Code.

Court: Why shouldn't the ballot by the IRS be counted as class 5 since class 4 no longer exists?

Short: Class 4 exists until they vote, and they voted against the plan. The plan made clear that they needed to make a decision about being treated as class 4 or class 5.

Court: So you're asking the Court to count their class 4 vote separately?

Short: Yes. The plan cannot be confirmed if you count the IRS's class 4 vote as a class 5 vote. Its objection isn't as to class 5 treatment.

Palmer: Resolved objection with a stipulation.

Locnikar: It appears there are grounds to work out a stipulation with the Debtors with respect to the remaining issues of treating the penalties as general unsecured claims and making the nondischargeability of certain tax claims clear in the plan. The only issue was that the Debtors had wanted provisions included in the stipulation stating that there was a dispute as to some of the penalties. This is now moot because a claim objection has been filed.

Court: If the parties reach a stipulation, it shall also address the treatment of the IRS's ballot, including whether it is to be treated as class 4 or class 5 and in acceptance or rejection.

Short: With respect to feasibility, the Debtors' income over the past 10 years were around \$325,000/year, excluding an unusually good year in 2016. The Debtors' construction company has been down while he's in bankruptcy, but it has gained new contracts that will generate additional income.

Court: Why has the business been down while the Debtors are in chapter 11?

Short: Unsure. The Debtor and his partner could testify as to those circumstances, if needed.

Court: The Court will accept their testimony through declarations.

OUTCOME:

1. The plan confirmation hearing [Dkt. No. 129] is continued to March 8, 2018 at 11:00 a.m. (Text Order to issue.)
2. On or before March 6, 2018, the Debtors and the IRS shall file any stipulation resolving the IRS's objection [Dkt. No. 145] (Text Order to issue.)
3. On or before March 6, 2018, the Debtors shall submit any declarations pertaining to plan feasibility. (Text Order to issue.)
4. The disclosure statement [Dkt. No. 131] is approved on a final basis. (Text Order to issue.)

DATED: 2/22/2018